claim." That being the case, the reply must not depart from the statement of claim. In this connection I may as well adopt a passage from the current edition of *Bullen & Leake's* "Precedents and Pleadings" (11th Edn.) at page 694:

> "The plaintiff, however, must not set up in his reply a new cause of action which is not raised either on the writ or in the statement of claim; it is provided that 'no pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same'. In other words the reply must not contradict or 'depart' from the statement of claim".

See also 1963 *Annual Practice* at page 561 under the heading "Where Reply Necessary".

The plaintiffs rely on the case of *Cohen* v. *Snelling*.[3] In that case the first action was commenced before the plaintiff had obtained a grant of letters of administration and it was discontinued. A second writ was issued after a grant had been obtained. It was contended by the defendants that the second action was barred by section 3 of the Fatal Accidents Act, 1846, which limits the right of action to the period of one year from the date of the death. That case had proceeded on the basis that liability was admitted and evidence to that effect was led in the course of the hearing at first instance. From that it may logically be inferred that such evidence was based on the pleadings in the statement of claim. To that extent *Snelling's* case can be distinguished from the present.

On these unhappy facts it is therefore plain that the acknowledgment should be pleaded in the statement of claim. I will therefore allow the application with costs.

Application allowed.

Solicitors: *Harbans Singh & Kamil; Talalla & Co.*

SHANGARA SINGH v. PUBLIC PROSECUTOR

[A.Cr.J. (Raja Azlan Shah J.) July 16, 1966]

[K.L. — Criminal Appeal No. 21 of 1966]

Penal Code, s. 193 — False evidence — Record unsigned as certified copy and undated — Evidence Ordinance, 1950, s. 167.

This was an appeal against the conviction of the appellant for the offence of giving false evidence. It appeared that the record in the case, in which the appellant was alleged to have made the false statement, was not signed as a certified copy and was not dated.

Held: the record should not have been admitted in evidence and as it was wrongly admitted the conviction must be quashed.

Cases referred to:—

(1) *Mohamed Hanifah* v. *Public Prosecutor* [1956] M.L.J. 83.

(2) *Wong Kok Keong* v. *R.* [1955] M.L.J. 13 at p. 15.

MAGISTRATE'S CRIMINAL APPEAL.

Edgar Joseph Jr. for the appellant.

Zaitoon binte Othman (Deputy Public Prosecutor) for the respondent.

Raja Azlan Shah J. (delivering oral judgment): The appellant was charged with an offence under section 193 of the Penal Code and was convicted and sentenced to one day's imprisonment and fined $500 in default one month's imprisonment.

The charge relates to what the appellant had said at the trial before the president of the sessions court when he stated in evidence that he did not make a statement to the police officer whereas in fact he did make a statement to that officer. The appellant has appealed on a number of grounds but counsel wishes to argue only on ground 3 which reads:

> "The learned president ought to have held that the omission on the part of the prosecution to tender in evidence the alleged statement of the appellant to senior inspector Michael Khaw (P.W.7) was fatal to the case for the prosecution".

It was argued that Exh. P3 (i.e. the record in Arrest Case No. 138 of 1964, the case which came before the learned president) should not have been admitted because not only was it not signed as a certificated copy but it was undated as well. I do not think that there is any point in citing any cases in support of counsel's proposition as the principle is firmly established: see *Mohamed Hanifah* v. *Public Prosecutor* [1]

The learned deputy public prosecutor urged upon me to invoke the provisions of section 167 of the Evidence Ordinance and she also cited the case of *Wong Kok Keong* v. *R.*[2] Section 167 clearly states that the improper admission of evidence shall not by itself be a ground for a new trial or reversal of any decision. However, that section is qualified by the proviso that there must be sufficient evidence to justify the decision arrived at by the court below independently of the evidence objected to as being improperly admitted. That was said by Spenser Wilkinson J. in the case cited above:

> "In my opinion, therefore, the sole test as to whether or not the judgment of the court below should be revers d or altered on account of the wrongful admission of this certificate is whether or not without that evidence there was sufficient evidence to justify the conviction".

I have no alternative but to allow the appeal. The conviction is quashed, and the fine is to be refunded to the appellant.

Appeal allowed.

Solicitors: *Joseph & Son.*